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STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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LEGAL ADVISORY

CALIFORNIA DEPARTMENT OF EDUCATION

721 Capitol Mall, Sacramento, CA 95814

DATE: March 24, 1998

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To: District Superintendents
Attention: Directors of Testing/Food Service Directors
cc: County Superintendents

From: Office of the General Counsel
Legal and Audits Branch

Subject: Education Code Section 49558 (Also see CDE/CNFDD
Management Bulletin No. 98-101)

The Improving America's Schools Act (IASA) requires disaggregation of test results within each state, local educational agency, and school by, among other factors, economically disadvantaged students compared to students who are not economically disadvantaged (Section 6311(b)(3)(I) of Title 20 of the United States Code (20 USC § 6311(b)(3)(I)). Additionally, California Education Code section 60630 requires the State Superintendent of Public Instruction (SSPI) to prepare an annual analysis of the results of the Standardized Testing and Reporting (STAR) Program including various factors that appear to have a significant bearing on the results.

Because Aid to Families with Dependent Children (AFDC) data is no longer available, eligibility status for free or reduced priced meal programs will be used as a proxy for economic disadvantage for both the federal and state reporting requirements. The data will be collected on the student demographic forms for the designated achievement test (Stanford Achievement Test Series, Ninth Edition ("SAT 9")) under the STAR Program.

Until this year, California law had been more restrictive than federal law concerning the use of any information contained in applications for free or reduced price meals for purposes not directly related to administration of the child nutrition programs. Effective January 1, 1998, school district governing boards (but not county boards of education) may adopt a policy authorizing one or more specific employees of the school district to use individual records pertaining to pupil eligibility status for participation in any free or reduced price meal program solely for the purpose of disaggregation of academic

achievement data (California Education Code section 49558(b) as added by Statutes of 1997, Chapter 834, (Assembly Bill 730)).

To be in compliance with Education Code section 49558, every school district governing board must adopt a policy to permit the use of individual records pertaining to pupil eligibility status for participation in any free or reduced price meal program solely for the purpose of disaggregation of academic achievement data. The policy must specify by name or by job title the employees authorized to use these records for this purpose. The school district governing board must include provisions in the adopted policy to ensure that

- no individual indicators of participation in any free or reduced price meal program are maintained in the permanent record of any pupil,
- no public release of information regarding individual pupil participation in any free or reduced price meal program is permitted, and
- the confidentiality provisions required by law are met. Specifically, the school district governing board must ensure that only the staff designated in this policy will use information regarding the eligibility status pertaining to individual pupils and will use that information solely for the purpose stated in the policy.

Data will be provided by each district to the State Department of Education through the publisher of the designated achievement test, Harcourt Brace Educational Measurement (HBEM), to enable the state to make the report required by 20 USC Section 6311(b)(3)(I) and to enable the SSPI to prepare the analysis and report required by Education Code section 60630. HBEM will transmit the data to CDE without pupil names or other identifiers. HBEM will destroy personally identifiable pupil data when no longer needed for compliance with these reporting requirements.

This use of eligibility status is authorized by the federal statutes governing the school lunch programs (42 USC § 1758(b)(2)(C)(iv)), and by the federal Family Educational Rights and Privacy Act (FERPA, 20 USC § 1232g(b)(1)(C) and (b)(3), and its implementing regulations (sections 99.31(a)(3) and 99.35(a) of Title 34 of the Code of Federal Regulations)); and by California Education Code sections 49076(a)(3) and 49558. As the publisher of the achievement test designated by the State Board of Education pursuant to Education Code section 60642, HBEM is an independent contractor authorized to receive personally identifiable information on individual pupils.

This Legal Advisory is informational. Please consult your agency's legal counsel if you have further questions about these statutes and regulations.